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THE INHERENT POWER OF THE JUDICIARY

By HENRY M. DOWLING *

Courts and lawyers are still under fire. The public's complaint against them is chronic; but in the last few years, the attacks have become more acute. There is an increasing outcry against the delays of the law; against the administration of the criminal law and the part attorneys have taken therein. "Ambulance chasing" and professional advertisements come in for their share of denunciation, and the claim is made that the bar has lost or is losing its prestige, because of the misconduct of certain of its members.

A cursory examination of the list of articles recently published in some of the leading magazines of the country discloses the following, all relating to our profession: "Guardians of Crime," *American Magazine*; "Law Lags Behind," *Christian Century*; "Cleaning the Courts," *Atlantic*; "Deception According to Law," *Nation*; "Humpty-Dumpty Rule in Law," *Atlantic*; "Bar for Sale," *Nation*; "Loophole Lawyers," *Saturday Evening Post*; "Dollar Grabbers at the Bar," *Outlook*; "Lawyers on the Loose," *Forum*; "Can a Lawyer be a Gentleman?" *Outlook*.

Scarcely a week passes, but some newspaper launches a broadside against the bar. Sometimes a priest or minister goes wrong, and even a physician or educator has been known to commit a crime, but the press makes no general attack upon the ministry, the teaching profession or the medical fraternity because of these specific instances. But with the bar it is different: the public deems the legal profession, as a whole, is besmirched by the misdeeds of a comparatively few conspicuous wrongdoers who are its unworthy members.

* Address delivered by Henry M. Dowling of the Indianapolis Bar at the Annual Meeting of the Indiana State Bar Association September 7, 1935; first published in the October American Bar Association Journal and reprinted here with permission of that journal.

Nor is this denunciation unreasonable, from the public's viewpoint. It, correctly or incorrectly, believes the bar could purge itself if it would, but it does not wish to do so. Furthermore, the infrequency of disbarment proceedings and investigations of professional malpractice is noticeable; the percentage in Indiana, for the five year period between 1929 and 1934 being 8/10 to 1,000 members of the bar; as against 10, 11 and 12 in some other states. The methods for disciplining the derelict members are cumbersome and ineffective, and the legislatures, composed largely of lawyers, do not show any great eagerness to right the situation; as was evidenced by the cool reception accorded by recent general assemblies to reform measures submitted by the Indiana State Bar Association.

These are counts in the indictment; but the lawyer also has his complaint against present conditions. He sees the practice of law, in and out of courts, going more and more into the hands of trust companies, automobile associations, protective associations, collection associations, adjustment concerns, hospital councils, incorporated law-dispensers, and other lay agencies, and when he raises his voice against them he is met with the cry of "monopolist," "self-seeker," and "dog-in-the-manger."

The condition in which the bar finds itself is anything but satisfactory; and the unhappy fact is, that the bar, of itself alone, can do little to better conditions. Its main reliance in that direction must be upon cooperation with the courts. There were courts centuries before there were lawyers; but today, the bench and bar are so intimately related that the problems of one are the problems of the other; and the courts, aided by the bar, hold the key to the solution of those problems.

Nor have the courts been backward in declaring their right to help improve the situation, by supervising and disciplining the bar, and at the same time safeguarding its traditional rights. In doing so, the bench has claimed what it calls its *inherent powers*, independent of legislative grant. The courts do not place themselves above the State or Federal

Constitutions, but, as one of the three great departments of government, they assert independence under those constitutions. They deny the right of legislative *dominance*, but they do not deny the right and advantage of legislative *cooperation* in rendering the judiciary more effective.

This claim of inherent judicial power is no novelty. In a variety of instances, wholly dissociated from visitorial authority over the legal profession, the courts have exerted powers never expressly bestowed upon them by constitution or statute; powers pertaining to their own procedure,¹ the physical surroundings and appointment of their court rooms,² the punishment for contempt of their authority,³ and in many other matters.⁴

When the question relates to the inherent authority of the courts over conduct of members of the bar, the judiciary unhesitatingly declare in favor of their inherent power,⁵ though

¹ *People v. Callopy*, 358 Ill. 11, 193 N. E. 634, 639; *People v. Cowdrey*, 196 N. E. 838 (Ill. Sup.); *Ex parte Sturm*, 152 Md. 114, 136 Atl. 312, 51 A. L. R. 356 (forbidding taking of photographs in court room); *Diggs v. Diggs*, 196 N. E. 858, 859 (Mass.); *Brandon v. Carter*, 119 Mo. 572, 581, 24 S. W. 1035, 41 A. S. R. 673, 674 (control over trusts); *Matter of Steinway*, 159 N. Y. 250, 265 (mandamus to aid stockholder); *State v. Townley*, 67 Oh. St. 21, 65 N. E. 149, 93 A. S. R. 636 (oaths administered to witnesses); *Ex parte Thomas Taylor*, 110 Tex. 331, 220 S. W. 74, 9 A. L. R. 963 (honoring letters rogatory); *Dallas v. Wright*, 36 S. W. (2d) 973, 77 A. L. R. 709, (Tex.) (ancillary equity powers), 7 *Ruling Case Law*, p. 1033; *Contra*, see *License to Practice Law*, 67 W. Va. 213, 242, 67 S. E. 597, (dissenting opinion).

² *Ex parte Mayor of Birmingham*, 134 Ala. 609, 33 So. 13 (preventing disturbing noises during court sessions); *Dahnke v. People*, 168 Ill. 102, 48 N. E. 137 (court's quarters); *City of New Orleans v. Bell, Sheriff*, 14 La. Ann. 214 (same); *State v. Davis*, 26 Nev. 373, 68 Pac. 689 (court room equipment); *Commissioners v. Hall*, 7 Watts (Pa.) 290 (board and lodging for jurors); *Surveyors v. Wingfield, Judge*, 27 Gratt (Va.) 329, 335; *Belvin v. Richmond*, 85 Va. 574, 8 S. E. 378, 1 L. R. A. 807 (same); *In re Janitor of Supreme Court*, 35 Wis. 410, 418-419 (appointment of janitor); *In re Court Room*, 148 Wis. 109, 121 (court quarters); *In re Lyman*, 55 Fed. 29, 42 (court's quarters).

³ *Little v. State*, 90 Ind. 338; *Hale v. State*, 55 Oh. St. 210, 45 N. E. 199, 60 A. S. R. 691, 36 L. R. A. 254.

⁴ *Schwelzel v. Board of Comrs.*, 16 Idaho 32, 100 Pac. 106, 133 A. S. R. 89, 21 L. R. A. (N. S.) 199; *McQuigan v. R. R. Co.*, 129 N. Y. 50.

⁵ *People v. Peoples Bank*, 344 Ill. 462, 176 N. E. 901, 906 (lower court's authority over bar not exclusive of Supr. Ct.); *In re Egan*, 22 S. Dak. 355, 117 N. W. 874 (legislative grounds for disbarment not exclusive); *In re Burton*, 246 Pac. 188 (Utah); *In re Morse*, 98 Vt. 85, 94, 126 Atl. 550 (practicing

the legislature has not seen fit to expressly grant it,⁶ a typical instance being, the permission accorded by a court to attorneys from other states to participate in specific litigation, without complying with the general terms for admission prescribed by the legislature.⁷

Among the situations where this inherent authority over membership of the bar has been claimed are the admission suspension, disciplining and disbarment of attorneys; for these, no legislative permission is considered requisite; and if a statute exists, it is not regarded as exclusive in its provisions.⁸

While the courts thus freely use the term "inherent power," they do not always define it. It may signify an authority asserted over and above, and independent of, the constitution. If so, the claim is unwarranted.⁹

Or it may mean the right of the court to act in a matter left untouched by the legislature; but where the statute, when enacted, will override the court; in which event, the "inherent power" amounts to little or nothing.¹⁰

Or, again, the term may connote what is essential to the existence, dignity and functions of the court as a constitutional

without authority); *In re Ole Mosness*, 39 Wis. 509, 20 Amer. Rep. 55 (forbidding practice by non-resident attorney).

⁶ *Ex parte Steckler*, 179 La. 410, 419, 422; *State v. Harber*, 129 Mo. 271, 294, 315; 31 S. W. 889; *State ex rel. v. Reynolds*, 22 N. Mex. 1, 158 Pac. 413; *In re Simpson*, 9 N. Dak. 379, 83 N. W. 541; *Rhode Island Bar Assn. v. Automobile Service Assn.*, 179 Atl. 139, 141 (R. I. 1935).

⁷ *Freeling v. Tucker*, 289 Pac. 85, 86 (Idaho).

⁸ *In re Durant*, 80 Conn. 140, 147; *In re Randall*, 11 Allen 472, 473, 479; *Bar Association v. Casey*, 211 Mass. 187, 97 N. E. 751, 39 L. R. A. (N. S.) 116; *In re Carver*, 224 Mass. 169, 172, 112 N. E. 877, 879; *In re Ulmer*, 268 Mass. 373, 167 N. E. 749, 755; *In re Opinion of the Justices*, 279 Mass. 607, 180 N. E. 725, 727, 81 A. L. R. 1059; *In re Opinion of the Justices*, 194 N. E. 313 (Mass. 1935); *State ex rel. v. Reynolds*, 252 Mo. 369, 380, 158 S. W. 671; *In re Bar Assn.*, 109 N. J. L. 275, 278, 160 Atl. 809; *State v. Winton*, 11 Ore. 456, 50 Amer. Rep. 486, 5 Pac. 337; *In re Lambuth*, 18 Wash. 478, 480; *State ex rel. Circuit Court*, 193 Wis. 132, 214 N. W. 396; *Rubin v. State*, 194 Wis. 207, 216 N. W. 513; *C. M. etc. R. Co. v. Wolf*, 199 Wis. 278, 289; *In re Richards*, 63 S. W. (2d) 672; (*Contra*, *In re Waugh*, 32 Wash. 50).

⁹ *In re Cannon*, 206 Wis. 374, 393, 240 N. W. 441.

¹⁰ *Re Applicants for License to Practice Law*, 143 N. C. 1, 55 S. E. 635, 10 L. R. A. (N. S.) 288.

tribunal and from the very fact that it is a court,¹¹ in which case the power may be described either as "implied," "essential," "incidental" or "inherent;" always understanding that it is a necessary adjunct to such courts as the constitution has seen fit to create.¹²

It is in this latter sense that we shall use the term, as such is the meaning usually attached to it by the courts.

Acting under what they conceive to be their constitutional rights as an independent factor in the government, and by virtue of their "inherent power," the courts have declared what constitutes the practice of law, although the legislature may or may not have attempted to define it.¹³

In so doing, the courts hold that "law practice," though perhaps incapable of exact and all-inclusive definition, embraces much more than the trial of cases in court; in fact, it is recognized that a large proportion of law practice takes place in the attorney's office and never reaches a court room nor falls under the eye of a judge.

It is on this ground that it has been held, under the inherent power of the courts, that the latter may forbid a corporation

¹¹ *Re Applicants for License to Practice Law*, 143 N. C. 1, 55 S. E. 635, 10 L. R. A. (N. S.) 288.

¹² *In re Simpson*, 9 N. Dak. 379, 404, 83 N. W. 541; *In re Bruen*, 102 Wash. 472, 475, 476, 172 Pac. 1152; *In re Cannon*, 206 Wis. 374, 393, 240 N. W. 441.

¹³ *People v. Merchants Protective Corp.*, 189 Cal. 531, 534, 209 Pac. 363; *Proper v. California Protective Corp.*, 76 Cal. App. 354, 244 Pac. 1089; *Boykin v. Hopkins*, 174 Ga. 511, 162 S. E. 796; *Re Eastern Idaho Loan etc. Co.*, 49 Idaho 280, 288 Pac. 157, 73 A. L. R. 1323; *People v. Schreiber*, 250 Ill. 345, 95 N. E. 189, 191; *People v. People's Bank*, 344 Ill. 462, 176 N. E. 901; *People v. Assn. of Real Estate Taxpayers*, 354 Ill. 102, 187 N. E. 823; *People ex rel. v. Motorists' Assn.*, 354 Ill. 595, 188 N. E. 827; *Eley v. Miller*, 7 Ind. App. 529, 535, 34 N. E. 836, 837; *In re Opinion of the Justices*, 194 N. E. 313 (Mass.); *Re George H. Otterness*, 181 Minn. 254, 232 N. W. 318, 73 A. L. R. 1319; *Fichette v. Taylor* (Minn.), 254 N. W. 910, 94 A. L. R. 356; *In re Bailey*, 50 Mont. 365, 146 Pac. 1101; *In re Cooperative Law Co.*, 198 N. Y. 479, 92 N. E. 15, 32 L. R. A. (N. S.) 55, 139 Amer. St. Rep. 839; *People v. Alfani*, 227 N. Y. 334, 125 N. E. 671; *People v. Title Guarantee etc. Co.*, 227 N. Y. 366, 125 N. E. 666; *Matter of Pace*, 170 App. Div. 818, 156 N. Y. S. 641; *People v. Title Guarantee Co.*, 180 App. Div. 648, 168 N. Y. S. 278-280; *Land Title Co. v. Dworken*, 129 Oh. St. 23, 193 N. E. 650; *Rhode Island Bar Assn. v. Automobile Service Assn.*, 179 Atl. 139, 141 (R. I. 1935); *Re Duncan*, 83 S. Car. 186, 65 S. E. 210, 211, 24 L. R. A. (N. S.) 750; *In re Eastern Idaho Co.*, 288 Pac. 157; *State v. Mississippi Valley Trust Co.*, 74 S. W. (2d) 348.

to "practice law," although the offender does not appear in court proceedings;¹⁴ for the reason that, in the nature of the case, a corporation cannot comply with the moral and intellectual qualifications exacted of individual members of the bar,¹⁵ and when it acts for a patron through its attorney, the latter is under a divided allegiance to the client and to the corporation which pays him;¹⁶ or the corporation itself may have a selfish interest to subserve, not consistent with its undivided duty toward the client.¹⁷

The court, in condemning practice of law by corporations, acts not only for the protection of clients but in aid of worthy members of its own bar who would otherwise be compelled to compete with these illicit lay organizations.¹⁸

Claiming to act under their implied authority, the courts have granted injunctions against the unauthorized corporations,¹⁹ and have disciplined attorneys who, by their professional activity, aid the corporation in the practice of law.²⁰

The scope of the inherent power of the courts as claimed by them, is seen in their frequently asserted right to investigate and control the conduct and practices of individual

¹⁴ *People v. Merchants' Protective Corp.*, 189 Cal. 531, 538, 209 Pac. 363; *People v. California Protective Corp.*, 76 Cal. App. 354, 244 Pac. 1089; *State v. Credit Men's Assn.*, 163 Tenn. 450, 43 S. W. (2d) 918; *State v. Merchants' Protective Corp.*, 105 Wash. 12, 17, 177 Pac. 694, 696; 2 *Ruling Case Law*, p. 946.

¹⁵ *Boykin v. Hopkins*, 174 Ga. 511, 162 S. E. 796; *N. Y. Photo Co. v. Schonert and Sons*, 95 N. J. Eq. 12; *Black and White Operating Co. v. Grosbart*, 107 N. J. L. 63, 68, 168 Atl. 229, 231; *Unger v. Landlords' Management Corp.*, 114 N. J. Eq. 68, 72, 168 Atl. 229, 231.

¹⁶ *People v. People's Trust Co.*, 180 App. Div. 494, 497, 167 N. Y. S. 767.

¹⁷ *People v. Title Guarantee etc. Co.*, 180 App. Div. 648, 650, 653, 168 N. Y. S. 278, 280; *State v. Mississippi Valley Trust Co.*, 74 S. W. (2d) 348, 359.

¹⁸ *People v. People's Bank*, 344 Ill. 462, 176 N. E. 901, 906; *Land Title Co. v. Dworken*, 129 Oh. St. 23, 193 N. E. 650.

¹⁹ *Land Abstract Co. v. Dworken*, 129 Oh. St. 23, 193 N. E. 650; and see *Fichette v. Taylor*, (Minn.) 254 N. W. 910, 94 A. L. R. 356.

²⁰ *People v. Macauley*, 230 Ill. 208, 120 Amer. St. Rep. 287, 82 N. E. 612; *Midland Co. v. Donnelley*, 219 Ill. App. 271, 277; *Re Otterness*, 181 Minn. 254, 232 N. W. 318, 73 A. L. R. 1319; *Matter of Rothschild*, 140 App. Div. 583, 125 N. Y. S. 629; *Matter of Pace*, 170 App. Div. 818, 824, 156 N. Y. S. 641; *Rhode Island Bar Assn. v. Automobile Service Assn.*, 179 Atl. 139, 146, (R. I. 1935); *In re Gill*, 104 Wash. 160, 176 Pac. 11; and see *Re Morse*, 98 Vt. 85, 126 Atl. 550, 36 A. L. R. 527.

members of the bar; on the ground that admission does not close the door to inquiry as to whether the fair moral and professional character which once existed still continues.²¹

In fact, this essential authority is said to extend to disbarment for wrongful acts having no direct reference to the practice of law, provided they indicate such a lack of integrity and moral character or disregard for the laws of the land, as unfit the attorney for the discharge of his professional duties.²²

In recent years, the courts have pressed their inherent power much further, and instead of limiting their inquiries to the conduct of certain individuals, have inaugurated sweeping investigations of the bar collectively, without reference to named persons; for the purpose of ascertaining if objectionable practices are being indulged in, which should be corrected. Thus, inquiries as to the prevalence of "ambulance chasing" in a given jurisdiction have been ordered by the courts, and the right of the investigators to compel witnesses to give information under oath has been upheld.²³

It thus appears that, whether rightfully or wrongfully, the courts have claimed an inherent judicial power of wide and expanding extent. A pertinent inquiry arises, whether such claim can be sustained on reason, or is it an unwarranted arrogation of authority by the judiciary?

²¹ *Selling v. Radford*, 243 U. S. 46, 61 L. Ed. 585; *In re Ulmer*, 268 Mass. 273, 167 N. E. 749, 753; *In re H—*, 87 N. Y. 521.

²² *People v. Meyerovitz*, 278 Ill. 356, 116 N. E. 189; *People v. Jadrich*, 320 Ill. 344, 151 N. E. 241; *People v. People's Bank*, 344 Ill. 462, 176 N. E. 901; *Underwood v. Commonwealth*, 105 S. W. 151 (semble) (Ky.); *Boston Bar Assn. v. Greenhood*, 168 Mass. 169, 183, 46 N. E. 568; *In re Carver*, 224 Mass. 169, 172, 112 N. E. 877, 879; *In re Mills*, 1 Mich. 392; *In re Richards*, 63 S. W. (2d) 672, (Mo.); *In the matter of —*, an attorney, 86 N. Y. 563; *In re Platz*, 42 Utah 439, 132 Pac. 390; *In re Burton*, 246 Pac. 188 (Utah); *State v. McClaugherty*, 33 W. Va. 250, 10 S. E. 407; *License to Practice Law*, 67 W. Va. 213, 67 S. E. 597; *Ex parte Wall*, 107 U. S. 265. (But see *In re Dampier*, 46 Idaho 195, 267 Pac. 452.)

²³ *In re Bar Assn. Hudson County*, 109 N. J. L. 275, 160 Atl. 809; *People v. Culklin*, 248 N. Y. 465, 162 N. E. 487, 60 A. L. R. 856; *Matter of Bar Assn. of New York*, 222 App. Div. 580, 584, 587, 227 N. Y. S. 1; *Matter of Brooklyn Bar Assn.*, 223 App. Div. 149, 227 N. Y. S. 666; *Rubin v. State*, 194 Wis. 207, 214.

Before answering that question, it were well to examine certain fundamental principles bearing on the subject. The first of these is, that the right to be admitted to the practice of law (as distinguished from the right to practice after admission) is not an absolute natural, property right, uncontrollable by courts or legislatures, but is a mere privilege, subject to reasonable restrictions.²⁴

When the applicant is admitted, it is by adjudication indicating that he is possessed of the necessary legal qualifications. Such adjudication can be nothing less than a judicial act.²⁵

Similarly, when he is suspended or disbarred, it is by judicial action; *i. e.*, a judgment of a court.²⁶

In disbaring, suspending or disciplining an attorney, the court does not presume to invade the province of the legislature by fixing a penalty for wrongdoing, nor to duplicate the punishment meted out by the criminal law; for such judicial action is not punitive but protective; to safeguard the court, the bar, and the public against misconduct by the wrongdoer.²⁷

²⁴ O'Brien's Petition, 79 Conn. 56, 55, 63 Atl. 777; *In re Durant*, 80 Conn. 140, 147; *In re Edwards*, 45 Idaho 676, 693, 266 Pac. 665; *Unger v. Landlord's Management Corp.*, 114 N. J. Eq. 68, 69, 168 Atl. 229; *Danforth v. Egan*, 23 S. Dak. 43, 119 N. W. 1021, 139 Amer. St. Rep. 1030; *License to Practice Law*, 67 W. Va. 213, 223, 67 S.E. 597; *In re Scott*, 292 Pac. 291, 295.

²⁵ *Brydonjack v. State Bar (Cal.)*, 281 Pac. 1018, 66 A. L. R. 1507; *People v. People's Bank*, 344 Ill. 462, 176 N. E. 901; *Hanson v. Grattan*, 84 Kan. 843, 115 Pac. 646, 34 L. R. A. (N. S.) 240; *In re application of Henry W. Cooper*, 22 N. Y. 67; *License to Practice Law*, 67 W. Va. 213, 218, 67 S. E. 597; *Ex parte Garland*, 4 Wall (U. S.) 333; 6 Corpus Juris, p. 571.

²⁶ *In re Shattruck*, 208 Cal. 6, 279 Pac. 998; *Brodenjack v. State Bar Assn.*, 208 Cal. 439, 281 Pac. 1018; *Carpenter v. State of California*, 211 Cal. 358, 295 Pac. 23; *In re Durant*, 80 Conn. 140, 147; *In re Edwards*, 45 Idaho 676, 687, 266 Pac. 665; *In re Day*, 181 Ill. 73, 54 N. E. 646, 653; *Hanson v. Grattan*, 84 Kan. 843, 115 Pac. 646, 34 L. R. A. (N. S.) 240; *In re Royall*, 33 New Mex. 386; *Petition of Splane*, 123 Pa. St. 527, 540; *In re Bruen*, 102 Wash. 472, 172 Pac. 1151; *License to Practice Law*, 67 W. Va. 213, 218, 67 S. E. 597; *Randall v. Brigham*, 7 Wall. 523.

²⁷ *In re Randall*, 11 Allen 473, 480; *In re Richards*, 63 S. W. (2d) 672, 679 (Mo.); *In re Bar Assn. Hudson County*, 109 N. J. L. 275, 278, 160 Atl. 809; *In re Randall*, 158 N. Y. 216, 52 N. E. 1106; *In re Rouss*, 221 N. Y. 84, 116 N. E. 783; *State ex rel. v. Winton*, 11 Oreg. 456, 465, 50 Amer. Rep. 486, 5 Pac. 337; *Rhode Island Bar Assn. v. Automobile Service Assn.*, 179 Atl. 139, 141; *In re Platz*, 42 Utah 439, 443, 444, 132 Pac. 390; *Ex parte Wall*, 107 U. S. 265.

The disciplinary actions of the courts being judicial and not legislative, must have a source other than the General Assembly; for the latter cannot, under our three-fold form of government, grant something it does not possess. Since each branch of the government is substantially independent of the others in its primary and essential functions, the only adequate source for the authority of the courts over the members of the bar must be the people, speaking by their constitution, which vests all judicial power in the courts.

But while this is true, and would seem to prevent the legislature from enacting any laws relating to admissions or disbarments of attorneys, it has long been recognized that the legislature, in the exercise of its police power for the public welfare, should have something to say about qualifications for the bar, as it legislates concerning qualifications of physicians, dentists, and members of other professions made subject to legislative license. The courts have conceded that the legislature may rightfully declare certain classes of applicants ineligible to the bar, because of their lack of moral or intellectual qualifications; the basis for such prohibition being the interest of the public in an upright and efficient body of practitioners.²⁸

It is said that such restrictions are not limitations on the powers of the judiciary but restrictions laid upon the individuals who apply for admission.²⁹

But while the legislature may thus fix the *minimum* requirements, and forbid the admission of those lacking such, it cannot determine the *maximum* qualifications and require the

²⁸ In re Chapelle, 71 Cal. App. 129, 234 Pac. 906; Brydonjack v. State Bar, 281 Pac. 1018, 66 A. L. R. 1507 (Cal., 1929); In re Day, 181 Ill. 73, 54 N. E. 646, 649; Robinson's Case, 131 Mass. 376, 41 Amer. Rep. 239; Danforth v. Egan, 23 S. D. 43, 119 N. W. 1021, 139 Amer. St. Rep. 1030; Motion to admit Miss Goodell, 39 Wis. 240, 20 Amer. Rep. 42; Vernon County Bar Assn. v. McKibbin, 153 Wis. 350, 141 N. W. 283; In re Cannon, 206 Wis. 374, 381, 382, 240 N. W. 441; Ex parte Garland, 4 Wall. 333; Keeley v. Evans, 271 Fed. 520, 524.

²⁹ In re Opinion of the Justices, 279 Mass. 607, 180 N. E. 725, 727, 81 A. L. R. 1059; In re Cannon, 206 Wis. 374, 381, 382, 240 N. W. 441.

acceptance of those who possess them;³⁰ nor can it limit the grounds for disbarment nor interfere therewith.³¹

Nor restore an attorney who has been dismissed from his profession by judgment of a court.³²

The courts further recognize that the lawmakers may prescribe rules *in aid of the courts*, concerning admission or disbarment, but that the inherent judicial power may not be impinged upon by such regulations. A court may ignore them, if it deems them unreasonable.³³

It is upon this theory of legislative aid that State Bar Acts ("Integrated Bar" statutes) have been upheld,³⁴ as well as legislative grounds for disbarment;³⁵ and the designation by

³⁰ *In re Bailey*, 30 Ariz. 407, 412-413, 416, 248 Pac. 29; *Brodenjack v. State Bar*, 281 Pac. 1018, 66 A. L. R. 1507 (Cal., 1929); *In re Branch*, 41 Vroom (N. J.) 537, 574, 575, 57 Atl. 431, 437; *In re Charles L. Thatcher*, 12 Ohio N. P. (N. S.) 273; *Olmstead's Case*, 292 Pa. 96, 103, 104, 140 Atl. 634; *License to Practice Law*, 67 W. Va. 213, 218, 222, 67 S. E. 597; *In re Boyd Adkins*, 83 W. Va. 673; *In re Mosness*, 39 Wis. 509; *Vernon County Bar Assn. v. McKiblin*, 153 Wis. 350, 354, 141 N. W. 283; *In re Cannon*, 206 Wis. 374, 381, 240 N. W. 441; *In re Shorter*, Fed. Cas. No. 12811; 3 Amer. and Eng. Ency. Law, p. 287.

³¹ 6 Corpus Juris, 580, 581; *In re Richards*, 63 S. W. (2d) 672, 679 (Mo.); *State Bar Com. v. Sullivan*, 35 Okla. 745, 131 Pac. 703, L. R. A. 1915D, 1218, 1223, 1228; but see, *In re Saddler*, 35 Okla. 510, 130 Pac. 906, 44 L. R. A. (N. S.) 1195.

³² *State ex rel. Brough*, 15 Ohio C. Ct. (N. S.) 97, 33 Ohio C. C. 257, 90 Ohio St. 382, 108 N. E. 1133.

³³ *In re Chapelle*, 234 Pac. 906, 71 Cal. App. 129; *In re Day*, 181 Ill. 73, 54 N. E. 646, 651, 652; *Witter v. Cook County Comrs.*, 256 Ill. 616, 100 N. E. 148; *People v. Callopy*, 358 Ill. 11, 192 N. E. 634; *In re Opinion of the Justices*, 194 N. E. 313; *In re Opinion of the Justices*, 279 Mass. 607, 180 N. E. 725, 728, 81 A. L. R. 1059; *In re Mills*, 1 Mich. 392, 394; *In re Bar Assn., Hudson County*, 109 N. J. L. 275, 280, 160 Atl. 809; *Petition of Splane*, 123 Pa. 527, 540, 16 Atl. 481; *In re Bruen*, 102 Wash. 472, 475, 476, 172 Pac. 1152; *License to Practice Law*, 67 W. Va. 213, 218, 222, 67 S. E. 597; *Motion to Admit Miss Goodell*, 39 Wis. 240, 20 Amer. Rep. 42; *Vernon County Bar Assn. v. McKiblin*, 153 Wis. 350, 354, 141 N. W. 283; (Contra, see *In re Application of Cooper*, 22 N. Y. 67; and see *State v. Reynolds*, 158 Pac. 413, 414, *semble*, distinguishing right to admit and to disbar).

³⁴ *State Bar of California v. Superior Court*, 207 Cal. 323, 278 Pac. 432; *In re Shattuck*, 208 Cal. 6, 279 Pac. 998; *Barton v. State Bar of California*, 289 Pac. 818, 819 (Cal.); *In re Edwards*, 45 Idaho 676, 690, 266 Pac. 665; *In re Henry*, 46 Idaho 578, 269 Pac. 416; *In re Scott*, 292 Pac. 291, 296 (Nevada).

³⁵ *Danforth v. Egan*, 23 S. Dak. 43, 119 N. W. 1021, 139 Amer. St. Rep. 1030.

the legislature of particular courts having authority to admit to, or disbar from, practice, and the effect of such admission.³⁶

We have thus far seen that the courts claim large inherent authority, independent of the legislature, especially in relation to controlling the members of the bar; and that they have held the legislature to be restricted, for the most part, to rendering aid to the courts in matters pertaining to admissions and disbarments. We shall now proceed to inquire, whether this claim of inherency on the part of the courts is predicated on solid foundations.

The historical approach to the question is unsatisfactory. Against the possession of this regulatory power over the bar, strong arguments have been made, based on the legislative control exercised over the legal profession in England in remote and modern times. But while, in support of this view, many Acts of Parliament governing the bar can be cited, as well as orders of the King, it must be remembered that in England, parliament is practically supreme. It may depose and decapitate a king, and has done so. It may abolish and create courts, and has done so. The nearest approach to parliament in the United States is a constitutional convention, and not a state or national legislature. No valid argument against the inherent power of American courts with respect to the bar can rest upon historic examples drawn from English legal history and parliamentary action.

But even in England, from ancient times, the authority of courts to admit, disbar and discipline members of the bar has been recognized.³⁷ And barristers, while not strictly under the direct disciplinary power of the courts, were members of the Inns of Court which in turn were subject to strict visitation by the judges.³⁸

³⁶ *In re Mock*, 146 Cal. 378, 80 Pac. 64; *Fairfield County Bar v. Taylor*, 60 Conn. 11, 22 Atl. 441; *Hoopes v. Bradshaw*, 231 Pa. 485, 80 Atl. 1098.

³⁷ 3 Blackstone's Com., p. 26; *In re Day*, 181 Ill. 73, 54 N. E. 646, 649; *State v. Reynolds*, 252 Mo. 369, 405, 406, 158 S. W. 67 (Woodson, J., dissenting opinion); *Rhode Island Bar Assn. v. Automobile Service Assn.*, 179 Atl. 139, 143; *People ex rel. v. Culkin*, 248 N. Y. 465, 162 N. E. 487, 60 A. L. R. 851, 856.

³⁸ *People ex rel. v. Culkin*, 248 N. Y. 465, 162 N. E. 487, 60 A. L. R. 851, 856.

But in the United States the doctrine has been announced and reiterated almost without dissent, that the members of the bar are officers of the court; amenable to it as their superior. Not that they are agents or representatives in the ordinary sense of being able to bind the courts by their actions; but they sustain that close, intimate relationship to the bench which can best be expressed by the phrase, "officer of the court."³⁹

Being such appointees, the court has an immediate interest in the character of the bar, for the court's own sake. A good bar is a necessity for a good bench; and the labors of the latter are lightened and rendered more effective by the learning and ability of the bar,⁴⁰ exactly as they are facilitated by efficient receivers, commissioners, referees, masters in chancery, bailiffs or probation officers; all of whom are subject to removal by the court.⁴¹

Furthermore, the lawyer is frequently the first judge to pass upon a case. This he does in the privacy of his office, before the stage of litigation is reached. He interprets laws, before and after litigation; and the skill and ability with which he interprets them, means much to the courts before whom they ultimately come.

But aside from the mere intellectual aid to be rendered the court by a competent bar, there is the inherent right of the court to surround itself with honest assistants who are sympathetic and will unite with it in the proper administration of justice and in maintaining that administration on a high plane. That is the main business of the court; and whatever obstructs or embarrasses its chief function, must be under its control; it cannot practically reside anywhere else.

³⁹ 3 Amer. and Eng. Ency. Law, p. 287; *Carpenter v. State of California*, 211 Cal. 358, 295 Pac. 23; *In re Durant*, 80 Conn. 140; *In re Day*, 181 Ill. 73, 54 N. E. 646, 647; *People v. People's Bank*, 344 Ill. 462, 176 N. E. 901; *Ex parte Steckler*, 179 La. 410, 422; *Bar Assn. v. Casey*, 211 Mass. 187, 192, 97 N. E. 751; *In re Application of Cooper*, 22 N. Y. 67; *People v. Culkin*, 248 N. Y. 465, 162 N. E. 487, 60 A. L. R. 856; *Ex parte Garland*, 4 Wall. 333.

⁴⁰ *Fairchild County Bar v. Taylor*, 60 Conn. 11, 17, 22 Atl. 441; *License to Practice Law*, 67 W. Va. 213, 218, 67 S. E. 597.

⁴¹ *Witter v. Cook County Comrs.*, 250 Ill. 616, 100 N. E. 148.

Hence the authority of a court over those who have a personal, monetary investment in a litigated cause, liable to weigh more heavily with them than their regard for justice.⁴²

Again: the usefulness of courts depends largely upon their maintaining the dignity which should attach to them. To the preservation or destruction of that dignity, the bar can substantially contribute. The court is regularly engaged in administering correct principles of justice and of fair dealing among men. If members of the bar, in their professional conduct, belie those principles, the dignity of the court is bound to suffer.⁴³

Therefore the court has the right to discipline the unworthy member, and to exclude those who, in contempt of the tribunal, seek to practice law before it without proper admission, or otherwise disparage the court's dignity.⁴⁴

The court is likewise interested, for its own sake, in purging its calendars of champertous causes or those not instituted in good faith; for these unnecessarily clog its legitimate business,⁴⁵ add to the expense of maintaining the court, and render judges and juries mere cat's-paws for those who seek extortion and injustice. Such suits may lead to retaliatory and irregular measures by their opponents, thus involving the court in an unseemly contest, with wrongdoing active on each side.⁴⁶

Finally, the court may suffer unjust criticism for delays in litigation due to the procrastination or dilatory tactics of attorneys. The judges are interested, therefore, in protect-

⁴² *Rubin v. State*, 194 Wis. 207, 214; *C. M., etc., R. Co. v. Wolf*, 199 Wis. 278, 289; *In re Cannon*, 206 Wis. 374, 383, 240 N. W. 441.

⁴³ *Re Brooklyn Bar Assn.*, 223 App. Div. 149, 227 N. Y. S. 666; *State v. Hayes*, 64 W. Va. 45, 52, 61 S. E. 355.

⁴⁴ *Re Eastern Idaho Loan, etc., Co.*, 49 Idaho 280, 288 Pac. 157, 73 A. L. R. 1323; *People v. Macauley*, 230 Ill. 208, 120 Amer. St. Rep. 287, 82 N. E. 612; *People v. Assn. of Real Estate Taxpayers*, 354 Ill. 102, 187 N. E. 823; *People v. Motorists' Assn.*, 354 Ill. 595, 188 N. E. 827; *Creditors' Clearing House v. Bannwart*, 227 Mass. 579, 116 N. E. 886, Amer. Cas. 1918C 136; *Re George H. Otterness*, 181 Minn. 254, 232 N. W. 318, 73 A. L. R. 1319; *In re Cooperative Law Co.*, 198 N. Y. 479, 92 N. E. 15, 32 L. R. A. (N. S.) 55, 139 Amer. St. Rep. 839; *Land Title Co. v. Dworken*, 129 Ohio St. 23, 193 N. E. 650.

⁴⁵ *Rubin v. State*, 194 Wis. 207, 214.

⁴⁶ *Rhode Island Bar Assn. v. Automobile Service Assn.*, 179 Atl. 139, 146.

ing themselves, by proper discipline, from incurring the unfair complaints of the public.⁴⁷

In addition to these duties which the court owes to itself and which it can discharge by appealing to its inherent powers, it is under obligation to the upright members of its bar, to protect them from the wrongful practitioner, and the odium the latter may cast upon the entire profession.⁴⁸

A third class of duties owing by the courts is to the state and to the public, any member of which is potentially a litigant or may need the services of an attorney. Because of the close connection between the bench and bar as constituting parts of one judicial system, the control to which the bar can be and has been subject, at the hands of the court, and the fact that courts possess part of the sovereignty of the state which has been vested in them by the constitution, the public has a right to assume that the practice of law is affected with a public interest and that the courts will perform their duty as depositories of a portion of the state's sovereignty, and not permit dishonest or incompetent attorneys to prey upon or misguide their fellow citizens,⁴⁹ leaving the client with only a dubious claim for malpractice against the attorney, in a suit wherein private interests might be embarrassingly divulged.

Furthermore, the bar is a moulder of public opinion, having a profound effect upon government, for good or ill. It constitutes the body from which judges, and many legislators, are chosen. These facts make it a public institution, and one which can best be regulated by the courts, whose code of rules reduces to certainty those professional standards which would otherwise be vague, and whose disciplinary machinery is, or can be made, adequate for effective control of the bar.

⁴⁷ *In re Cannon*, 206 Wis. 374, 384, 240 N. W. 441.

⁴⁸ *People v. People's Bank*, 344 Ill. 462, 176 N. E. 900, 906; *Re Bar Association*, 222 App. Div. 580, 227 N. Y. S. 1; *Land Title Co. v. Dworken*, 129 Ohio St. 23, 193 N. E. 650; *In re Morse*, 98 Vt. 85, 126 Atl. 550, 36 A. L. R. 527; *Barton v. State Bar*, 289 Pac. 818, 820.

⁴⁹ *State Bar of California v. Superior Court*, 207 Cal. 323, 331, 278 Pac. 432; *In re Cooperative Law Co.*, 198 N. Y. 479, 92 N. E. 15, 32 L. R. A. (N. S.) 55, 139 Amer. St. Rep. 839; *Rhode Island Bar Assn. v. Automobile Service Assn.*, 179 Atl. 139, 143 (R. I., 1935).

In view, therefore, of the vital interests which the courts have in the bar, from the standpoint of the courts themselves, the membership and the general public, there is no reason to doubt the right of the judiciary to take all reasonable and appropriate steps to afford these protections and discharge these obligations.

Just what those measures shall be, must be determined largely by the courts themselves. Knowing the situation needing a remedy, they are in the best position to select one. They need not sit passively and await action by some one else; but may select their own agency for action.⁵⁰

Hence, they may use contempt proceedings, against those who show disrespect for the court or who practice law without authority or aid another in so doing; or an injunction;^{50a} or inaugurate inquiries into the acts of individuals, or general investigations of irregular practices; or utilize the organizations provided by State Bar Acts. While not capable of creating a State Bar Corporation, much the same results might be reached through the selection by the Supreme Court of general and local committees, charged with the duty of investigating and making recommendations as to admission, disciplining and disbarment.

We have thus far considered the subject as reflected in the decisions and declarations of courts throughout the United States. The rulings of the higher courts of Indiana are, for the most part, in entire accord with what has been already stated. Inherent power in the judiciary is sustained in this state by a long line of decisions, involving a variety of judicial actions;⁵¹ including, among others, the right to punish for

⁵⁰ Rosenthal v. State Bar, 165 Atl. 211, 213, 214 (Conn.); *In re Randall*, 11 Allen 473, 479; *Matter of Bar Assn. of City of New York*, 222 App. Div. 580, 586, 227 N. Y. S. 1; *State v. Hays*, 64 W. Va. 45, 48, 61 S. E. 355; *Vernon County Bar Assn. v. McKiblin*, 153 Wis. 350, 353, 141 N. W. 283; *Rubin v. State*, 216 N. W. 513, 516; *McVicar v. State Board*, 6 Fed. (2d) 33, 35.

^{50a} *Fichette v. Taylor* (Minn.), 254 N. W. 910, 94 A. L. R. 356.

⁵¹ *Brown v. Brown*, 4 Ind. 627 (taxing costs to attorney); *Nealis, Admr. v. Dicks*, 72 Ind. 374 (setting aside judgment for fraud); *Sanders v. State*, 85 Ind. 318, 329 (issuing writ coram nolis) (relieving from excusable mistakes, etc.); *Gregory v. State*, 94 Ind. 384 (fixing bail); *Smythe v. Boswell*, 117 Ind. 365, 366 (semble) (extending time for appeal); *State ex rel. v. Noble*, 118 Ind. 350, 359, 360 (selection of assistants); *Hutts v. Martin*, 131 Ind. 1, 3

contempt,⁵² to prescribe rules for court procedure,⁵³ and to take such action as is reasonably necessary to enable them to perform their judicial functions fully and freely and preserve their dignity, decorum and order.⁵⁴

Our courts hold that none of these inherent powers is derived from the legislature, for the latter has no judicial power to bestow, and cannot lawfully invade the territory assigned by the constitution to the courts.⁵⁵

The powers are wholly derived from the constitution and the common law,⁵⁶ and the legislature may only aid in their exercise; not interfere therewith.⁵⁷

When applied to the bar, the inherent powers of the judiciary, as the Indiana courts declare, extend to punishing an attorney for contempt⁵⁸ and to his admission and disbarment;⁵⁹ these conclusions being based upon the fact that the attorney is an officer of the court and hence is subject to its control.⁶⁰

(relieving from excusable mistakes, etc.); *Bank of Westfield v. Inman*, 133 Ind. 287 (relieving from excusable mistakes, etc.); *Board of Comrs. v. Stout*, 136 Ind. 53 (ordering operation of Court House elevator); *In re McDonald*, 200 Ind. 424, 164 N. E. 261 (vacating judgment procured by fraud).

⁵² *Ex parte Smith*, 28 Ind. 47, 48; *Little v. State*, 90 Ind. 338 (contempt proceedings).

⁵³ *Smith v. Hamill*, 137 Ind. 198, 199, 140 Ind. 340, 341; *State v. Van Cleave*, 157 Ind. 608; *Parkinson v. Thompson*, 164 Ind. 609, 626; *Epstein v. State*, 190 Ind. 693, 128 N. E. 353; *Roberts v. Donahue*, 191 Ind. 95, 131 N. E. 33, 35.

⁵⁴ *Board v. Thompson*, 7 Ind. 265 (semble) (physical conditions); *Nash, Auditor, v. State*, 33 Ind. 78 (physical conditions); *Board of Comrs. v. Stout*, 136 Ind. 53, 59, 60, 62 (physical conditions); *Board v. Guin, Sheriff*, 136 Ind. 562, 579 (physical conditions).

⁵⁵ *Young v. State Bank*, 4 Ind. 301, 303; *Deutschman v. Charleston*, 40 Ind. 449; *C. C. & I. R. Co. v. Board*, 65 Ind. 427, 439; *Shoultz v. McPheeters*, 79 Ind. 373, 375; *Ex parte Griffiths, Reporter*, 118 Ind. 83; *State ex rel. v. Noble*, 118 Ind. 350, 356, 357, 360, 361, 366.

⁵⁶ *State ex rel. v. Noble*, 118 Ind. 350, 354, 366.

⁵⁷ *Brown v. Brown*, 4 Ind. 627; *Little v. State*, 90 Ind. 338; *Holman v. State*, 105 Ind. 513, 515; *Cheadle v. State*, 110 Ind. 301, 309; *Hawkins v. State*, 125 Ind. 570, 573; *State v. Shumaker*, 200 Ind. 623, 157 N. E. 769, 774.

⁵⁸ *Ex parte Smith*, 28 Ind. 47, 48.

⁵⁹ *Walls v. Palmer*, 64 Ind. 493, 495; *Garrigus v. State*, 93 Ind. 239, 242; *In re Petition of Leach*, 134 Ind. 665, 671.

⁶⁰ *Ex parte Trippe*, 66 Ind. 531, 535; *Pittsburgh Ry. Co. v. Muncie Co.*, 166 Ind. 466, 77 N. E. 941; *Cleveland Ry. Co. v. Wuest*, 40 Ind. App. 693, 32 N. E. 986.

The legislature is conceded to have a right to declare certain classes of persons ineligible to admission, because of moral deficiencies,⁶¹ and to prescribe regulations for disqualifying members of the bar.⁶²

The right to be admitted to practice was at one time held in this state to be inalienable and protected by the Federal Constitution,⁶³ but the later utterance of the Supreme Court makes it a mere privilege and not an unqualified natural or constitutional right.⁶⁴

Since the Supreme Court has held that the constitutional qualifications for admission to the bar have been repealed at the election of 1932,⁶⁵ there is nothing to prevent the Supreme Court from now exercising its full inherent authority over the bar, both as to admission, discipline and expulsion. Even those who deny such inherent power, and trace all control of the bar back to the legislature, should be satisfied with the purported delegation of authority by the General Assembly to the Supreme Court, by the Act of 1931. (Burns' Stat. 1933, Section 4-3605), so far as *admissions* are concerned. That statute is probably nothing more than declaratory of the inherent powers of the court; which powers extend to disbarment and discipline, even without the aid of a statute.

Our conclusion, therefore, is, that throughout the United States, and specifically in Indiana, broad, inherent judicial authority is found to exist, ample for the betterment and control of the bar. But the views so declared have not been accepted without criticism. These will now be briefly considered, and replied to.

It is said that all governmental power not granted by the constitution to the executive or to the judiciary; nor reserved

⁶¹ Blake's Case, 1 Blackf. 483 (duelling); In re Petition of Leach, 134 Ind. 665, 667.

⁶² Ex parte Smith, 28 Ind. 47; Klingensmith v. Kepler, 41 Ind. 341, 344; Walls v. Palmer, 64 Ind. 493, 495; In re Petition of Leach, 134 Ind. 665, 671.

⁶³ In re Petition of Leach, 134 Ind. 665, 669.

⁶⁴ In re McDonald, 200 Ind. 424, 164 N. E. 261, 262.

⁶⁵ In re Todd, 193 N. E. 865 (Ind., 1935).

to the people, is vested in the legislature; and since no regulatory authority has been expressly granted by the constitution to the courts, it must now reside in the legislature, regardless of where it was, prior to the adoption of the constitution.^{65a}

Otherwise expressed, the state constitution is an instrument of *grant* as to the *judiciary*, but an instrument of *limitation* as to the *legislature*, which latter department of government is unrestrained in its control of the bar. But no such distinction between "judicial grant" and "legislative limitation" appears in the Indiana constitution, which, in similar language, vests legislative power in the General Assembly and judicial power in the courts. This grant to the courts carries with it those necessary, incidental powers which must belong to them if they are to function as courts. It can, therefore, truthfully be said that the inherent judicial powers are derived from the constitution, which created courts to which they were necessarily incident.⁶⁶

Furthermore, it is settled beyond dispute that the legislative department of government in the United States has many inherent, auxiliary powers not specified in the constitution.⁶⁷

If the legislature has such, by the same token the judiciary may possess them.

It is further suggested that courts should have no implied authority over conduct of attorneys outside the court room; and particularly with reference to non-professional activities. But the overwhelming opinion of the courts has been that the most flagrant wrongdoing or the display of the greatest ignorance is most likely to occur in the attorney's or client's office or home, and not under the eye of the court; that the practice of law consists of much more than participation in litigation in court. It is not the time nor place of the objectionable conduct that is so important, as that it reveals a char-

^{65a} State v. Reynolds, 252 Mo. 369, 158 S. W. 671 (Brown, J.).

⁶⁶ State ex rel. v. Noble, 118 Ind. 350, 354, 356.

⁶⁷ McGrain v. Daugherty, 273 U. S. 135, 71 L. Ed. 580, 50 A. L. R. 1.

acter unworthy to be accredited as a member of the bar or trusted by the public.⁶⁸

It is said that the legislature, not the courts, should prescribe the rules for admission to the bar, by analogy to the licensing of physicians, dentists, plumbers, barbers and "beauticians."⁶⁹

But no such analogy exists. Those professions and occupations have nothing to do with the general system of the administration of justice, nor do they put the judicial machinery in motion. The courts do not come into intimate contact with them. They have no influence upon the court and afford it no aid in performing its functions.⁷⁰

It is argued that the legislature has an almost unlimited "police power" under which it can regulate admissions to or expulsions from the bar; and that no inherent regulatory power of the courts is necessary; that if the courts have such power, the regulatory acts of the legislature are unconstitutional. However, it is generally recognized that the legislature may exert its police power in *aid* of the courts in their dealings with the bar, but that such exercise must not encroach upon the judicial functions. Thus both the police power and the inherent power of the courts are harmonized.

It is denied that lawyers are officers of the court, and hence are not under its visitatorial power. But it is too late in the day to deny the official relation between attorneys and the court. They are admitted by a court adjudication and disbarred by court action. They are subject to call as special judges or as counsel for receivers and court appointees. They may be called upon for services as *amici curiae*; and in an especial sense are assistants of the court.

It is claimed that the primary duty of the attorney is to his client and not to the court; that the client is entitled to have whatever representative he pleases, free from court interference. But the premise is false. The attorney owes

⁶⁸ *People v. People's Bank*, 344 Ill. 462, 176 N. E. 901; *People v. Alfani*, 227 N. Y. 334, 125 N. E. 671, 673.

⁶⁹ *Re Application for License to Practice Law*, 143 N. C. 1, 55 S. E. 635, 10 L. R. A. (N. S.) 288.

⁷⁰ *In re Day*, 181 Ill. 73, 54 N. E. 646, 653.

his first duty to the court. He assumed his obligations toward it before he ever had or could have a client. His oath compels him to be absolutely honest with the tribunal before which he practices, even though his client's interests may seem to require a contrary course. The lawyers cannot serve two masters; and the one he has undertaken to serve primarily, is the court.

It is said that progress in the intellectual and moral requirements of the profession is more likely to result from legislative control of the bar, than if the courts control it. But it is not true that the courts are ultra-conservative regarding requirements for the bar. The recent acts of the courts in using their inherent authority for improving and purging the profession is proof that progress may be expected from the judiciary even more than from the legislature, which, in most states, has shown little interest in bettering conditions.

The assertion is made that the courts should have no more inherent power over the bar than they possess over clerks of court; who cannot be tried summarily and dismissed by the court for misconduct in office.⁷¹

But the clerk is usually selected by the people, and owes no special obligation to the court. The attorney is admitted by the court, and sustains a relation of peculiar intimacy to the tribunal which gave him his professional life; whose standing and reputation in the community are largely in his hands.

Finally it is argued that dire results may flow from conceding inherent judicial power. Courts, it is feared, may raise the standards for admission to the bar so high, as to prevent all but a few from practicing law.⁷²

The abuse of their power, it is suggested, may damage their own reputation in the public mind and thereby impair their usefulness.

Regulations by the legislature, conceded to be proper if reasonable and in aid of the courts, may conflict with regulations by the bench, so opponents of inherent power assert.

⁷¹ *State v. Reynolds*, 252 Mo. 369, 389, 158 S. W. 671 (Brown, J.).

⁷² *License to Practice Law*, 67 W. Va. 213, 243, 67 S. E. 597 (dissenting opinion).

It is said that if courts have this regulatory power, they may delegate it to committees and other representatives whose actions might be unreasonable and oppressive, and whose investigations might ruin an innocent man. We are told that the legislature and executive branches of government might, in the exercise of a similarly claimed "inherent power," set up professional standards of efficiency of lawyers appearing before committees or boards, inconsistent with the standards set by the courts.

But these prognostications are based on unsubstantial fears and unfounded assumptions. The inherent power of the courts, though admitted to the fullest extent, is not omnipotent. There are recognized limits beyond which it cannot go. There is the conceded right of the legislature to exert its police power in prescribing reasonable rules and regulations both as to admissions to the bar, and exclusions therefrom. These will be followed by the courts as advisory regulations, if deemed reasonable and not as invading the judicial functions.⁷³

In disbarment or suspension proceedings, the accused attorney must have his day in court; for his right to practice, when once duly granted, is property or a franchise which may not be taken from him nor seriously interfered with, without due process of law; for in this the constitutions of the state and nation protect him;⁷⁴ and the same right has even been extended to those who are only applicants for admission, and not practicing lawyers.⁷⁵

Nor can the courts delegate their final authority over members of the bar, to boards of commissioners with power to act. These agencies may be utilized for investigation or fact-finding purposes, and to make recommendations; much as a jury

⁷³ *In re Bar Assn. Hudson County*, 109 N. J. L. 275, 280, 160 Atl. 809.

⁷⁴ *In re Peterson*, 208 Cal. 42, 280 Pac. 124; and see *Re Collins*, 188 Cal. 701, 206 Pac. 990, 32 A. L. R. 1062; *In re Durant*, 80 Conn. 140, 148; *Ex parte Smith*, 28 Ind. 47; *Heffren v. Jayne*, 39 Ind. 463, 468; *Ex parte Trippe*, 66 Ind. 531, 535; *State v. Reynolds*, 158 Pac. 413, 417 (N. Mex.); *State v. McClagherty*, 33 W. Va. 250, 10 S. E. 407; *Kelley v. Evans*, 271 Fed. 520, 522.

⁷⁵ *Re Application of Jesse Crum*, 103 Oreg. 296, 301, 204 Pac. 948.

may be used in an equity cause, as advisors to the court; but the final decision must rest with the latter.⁷⁶

Nor can the judicial power become so arbitrary and oppressive as to compel an attorney, investigated by the court's agencies, to incriminate himself by his answers under oath,⁷⁷ or divulge confidential communications made to him by his client. The ordinary rules of evidence would operate for his protection and for that of his employer.⁷⁸

Summing up what has been said:—the present situation of the legal profession is unsatisfactory, both from the standpoint of the public and of the worthy practitioner, himself. The bar alone is not in a position to correct that situation, but in co-operation with the courts, in the exercise of their inherent judicial power, much betterment could be accomplished. This has been demonstrated by the instances where such inherent power has been used in other states, for the eradication of abuses both on the part of unworthy members of the bar and by the layman against the lawyer. The methods by which such implied power may be put in operation, are primarily within the discretion of the courts, which have a large authority, subject, however, to the restraints which the constitution and their own voluntary respect for the acts of the legislature, impose.

In one of the art galleries of Europe stands a statue from the chisel of Michael Angelo: called, "The Bound Captive." Looking at it casually, you see a captive, apparently bound with strong ropes; the badges of his captivity. But look more closely and you will observe that the knots of the ropes are held in the captive's own hands, capable of being untied by him, and impose no restraint whatever upon the captive, who can throw them off and hurl them from him at his pleasure, and stand forth, a free man. The courts are in much the same condition. For years they have been deemed curbed and

⁷⁶ *In re Shattuck*, 208 Cal. 6, 279 Pac. 998; *In re Edwards*, 45 Idaho 676, 687, 266 Pac. 665; *In re Royall*, 33 N. Mex. 386; *In re Buren*, 102 Wash. 472, 172 Pac. 1152.

⁷⁷ *State ex rel. v. Circuit Court*, 193 Wis. 132, 214 N. W. 396.

⁷⁸ *In re Richardson*, 79 Cal. Dec. 477, 288 Pac. 669, 671.

cabined by legislatures and by their own reluctance to act. These have been fetters, to be sure, but fetters with no binding force. If the courts have a will to act, they may find that they have resident within them a potency, which, with the hearty cooperation of the bar, is able to purge the profession of its dishonest elements and restore it in public estimation to the high position in the commonwealth which it deserves and which by right belongs to it.

It is said that there is enough latent atomic energy in a single glass of water, if released, to generate 200 horse power for a whole year. There is enough inherent power in a mass of earth the size of my fist to lift the German navy from the bottom of the ocean and place it on the highest hill in England. There is enough power in the material of a copper penny, to drive the Leviathan from New York to Liverpool. So it may be said there is enough latent judicial energy in the courts of this state to generate a power which will purge and dignify the legal profession not for one year only, but for all time; enough unused potency which, if released, can drive the profession forward from a defensive attitude to one of aggressive and positive action for the public good; enough "inherent judicial power," to raise that profession from the place of public criticism to which it has been consigned, to that high and honorable position in public esteem which is its natural and historic birthright.